

1 TONY TAMBURELLO
2 California SBN 46037
3 Law Office of Tony Tamburello
4 214 Duboce Avenue
5 San Francisco, CA 94103
6 Telephone: (415) 431-4500
7 Facsimile: (415) 255-8631

6 | Counsel for Defendant KUO HSUAN CHANG

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,) No. CR-13-670-001 CRB
13 Plaintiff,)
14 v.)
15) Date: April 26, 2018
16) Time: 1:30 p.m.
17 KUO HSUAN CHANG,) Court: The Honorable Charles R. Breyer
18 Defendant.)

INTRODUCTION

21 Mr. Kuo Hsuan Chang, a 78 year old man who has never before been convicted of a
22 crime, stands before the Court for sentencing based upon his admitted involvement in a bid
23 rigging scheme in 2009-2010. At the outset of the case in November 2013, Mr. Chang was
24 released on his own recognizance, and he has been living a peaceful and law abiding life at home
25 with his wife and grandson ever since. Mr. Chang is an elderly gentleman who suffers myriad

DEFENDANT KUO HSUAN CHANG'S
SENTENCING MEMORANDUM
US v. *Chang*, Case No. CR 13-670 CRB

1 chronic health conditions that require ongoing medical care. He is fortunate in that he has the
2 love of his close family, consisting of his wife, two sons and three grandchildren, as well as a
3 large extended family of siblings. Although he has lived an honorable and hardworking life
4 supporting his family, he feels that his life has been marred by his involvement in this case.

5 He was invited to attend a foreclosure auction by his business partner in 2009, and
6 together they purchased several properties at artificially low prices. He is deeply ashamed of his
7 participation in this scheme, and regrets his conduct. As he explains in his written Statement of
8 Acceptance of Responsibility, he sees that his conduct was wrong and resulted in properties
9 being sold at unfair prices. He has insight now as to how this was something that may have
10 seemed at the time like something that “everyone else was doing” and just the way people did
11 business at these auctions, but was in fact both wrong and illegal. He has spent the past five
12 years trying to make up for his grave error in judgment, first by cooperating with the United
13 States in its investigation, and then by accepting responsibility and ensuring that he continues his
14 real estate business with only the most scrupulous moral and legal principles.

15 Mr. Chang pled guilty to violating one count of 15 U.S.C. §1 pursuant to a plea
16 agreement with the United States. The Plea Agreement contemplates a motion for a downward
17 departure by the United States pursuant to United States Sentencing Guidelines Section 5K1.1
18 from an Adjusted Offense Level of 13, which produces, before any departure, a guideline range
19 of 12-18 months in Zone C of the United States Sentencing Guidelines Sentencing Table. The
20 defendant is also permitted to argue for a variance, and does so here.

21 Mr. Chang is grateful for the Probation Officer’s recognition that as compared with many
22 other defendants, his conduct was at the more moderate end of the spectrum and that his health
23 and age make him a poor candidate for a custodial sentence. *See PSR ¶¶ 79-81.* The Probation
24 Office has recommended a variance and sentence of three years probation, with a special
25 condition requiring three months of home detention with electronic monitoring at the discretion
26

1 of the U.S. Probation Office. Mr. Chang has no factual objections to the report. He does,
2 however, ask the Court not to impose home confinement.¹ Mr. Chang has an unpredictable work
3 schedule and attends frequent medical appointments. Mr. Chang respectfully urges this Court to
4 adopt the recommendation of the Probation Office of a non-custodial sentence and asks that a
5 sentence of probation be imposed as punishment for his mistakes.

6 As identified by the Probation Office, there are mitigating factors that warrant a below-
7 guideline sentence in this case. In addition to the three factors identified by the Probation Office
8 in support of a variance: 1) Mr. Chang's advanced age, 2) his medical condition, and 3) the need
9 to avoid unwarranted sentencing disparity, Mr. Chang submits that the following additional
10 factors also support a sentence below the advisory guideline range: 4) the aberrant nature of the
11 offense; 5) Mr. Chang's low risk of recidivism due to his personal background and age; 6) his
12 long history of lawful employment; 7) his extreme remorse and acceptance of responsibility; and
13 8) his family support and responsibilities.

14 A sentence of three years probation is sufficient, but not greater than necessary, to achieve
15 the goals of sentencing stated in 18 U.S.C. § 3553 (a)(2) and constitutes a fair and just sentence.

16 PERSONAL BACKGROUND

17 Mr. Chang was born in 1936 in Kolkata, India. He was one of six children raised in a
18 tightly-knit family in an apartment in Kolkata. He was a good student, and worked hard,
19 eventually becoming a dental assistant in one of his father's dental offices. He had a job from the
20 time he was old enough to work. He met his wife Chia Chih Yuan in Kolkata, and the two were
21 married in 1965. They have been happily married since.

22

23

24 ¹If the Court is inclined to impose home detention, the defense would ask for a level of
25 home confinement known as "curfew" rather than the more strict "home detention" suggested by
26 the Probation Office. Both methods of home confinement allow the probation officer to
determine the precise method of monitoring.

1 In 1969, Mr. Chang applied for and received a visa to come to the United States. He
2 came to this country seeking a better opportunity for his young family, but could only afford to
3 come alone with very little money in his pocket. He worked hard, and within a few years he was
4 able to move his wife and children to the United States. Like his parents, his first job here was as
5 a dental technician. Mr. Chang and his wife have raised two successful, law-abiding children,
6 Mike and Steve, both of whom live here in the Bay Area and have raised their own children. Mr.
7 Chang is extremely proud of his sons and grandchildren.

8 In 1977, Mr. Chang decided to get into the real estate business with his first purchase of a
9 motel in Gilroy. He still owns and manages this motel with the help of his niece. This purchase
10 was the first of many real estate purchases, and was the beginning of a now 40-year real estate
11 career. Until he attended the first foreclosure auction in this case in 2009, he had never
12 purchased real estate at an auction.

13 Mr. Chang is very close with his siblings, and has maintained close relationships with his
14 extended family. Recently, in January 2018, he suffered the tragic loss of his brother from
15 complications of bypass surgery. Mr. Chang is still recovering from the loss of his near lifelong
16 friend and brother.

17 Mr. Chang has his own health problems as well, which he manages with regular medical
18 appointments, sometimes on an emergency basis. Mr. Chang was diagnosed with prostate cancer
19 in early 2004, which is currently in remission. In 2006, he was diagnosed with atrial
20 defibrillation, and he also suffers from glaucoma, high blood pressure, hearing loss and constant
21 pain in his ankle. Mr. Chang takes several medications to manage these conditions.

THE OFFENSE CONDUCT

23 As explained above, Mr. Chang has been involved with the real estate business since
24 1977. He has been a law-abiding man, always conducting his business honorably and legally. In
25 2009, his business partner Lydia introduced him to the concept of buying property at foreclosure

1 auctions. When Mr. Chang and Lydia Fong arrived at Mr. Chang's first auction, he met several
2 men (now co-defendants) who informed him of how business would be done if he wanted to bid
3 on a property. This involved cash payments and reduced bids, which they were told was "how
4 business was done here." He understands that the existence of this process is no excuse for his
5 own poor decision making. He made the decision to participate in this setup, and regrets that
6 decision to this day. Mr. Chang had no prior experience with purchasing real estate at auctions
7 and knew nothing of this scheme before arriving at his first auction with Lydia in 2009. He was
8 naive, and also ignored that internal voice that was telling him this was not how an auction
9 should be conducted.

10 **KUO HUAN CHANG'S SENTENCING REQUEST**

11 **A. The Court Should Exercise its Discretion To Impose a Sentence Below the
12 Guideline Range**

13 When determining the appropriate sentence for an individual defendant, a district court
14 should impose the shortest sentence possible that, (1) reflects the seriousness of the offense,
15 promotes respect for the law, and provides just punishment for the offense; (2) deters future
16 criminal conduct; (3) protects the public from the defendant and (4) provides the defendant with
17 the "needed educational or vocational training, medical care, or other correctional treatment in
18 the most effective manner." 18 U.S.C. § 3553(a)(2). When determining whether a given
19 sentence is sufficient to effectuate these purposes, district courts are directed to consider the
20 nature and circumstances of the offense and the history and characteristics of the defendant, the
21 kinds of sentences available, the defendant's guideline range, any relevant policy statements, the
22 need to avoid unwarranted sentence disparities among defendants with similar records who have
23 been found guilty of similar conduct, and the need to provide restitution to any victims of the
24 offense. 18 U.S.C. § 3553(a). The Supreme Court in *United States v. Booker*, 543 U.S. 220
25 (2005), and the long line of cases in its progeny, do "not allow a sentencing court to presume that
26

1 a sentence within the applicable Guidelines range is reasonable.” *Nelson v. United States*, 555
 2 U.S. 350, 352 (2009).

3 **B. Multiple Bases Exist in This Case to Vary From the Recommended Guideline
 4 Range and Impose a Sentence of Three Years Probation**

5 As noted at the outset, there are numerous mitigating factors in this case that warrant a
 6 modest variance from the recommended guideline range: 1) the aberrant nature of the offense; 2)
 7 Mr. Chang’s low risk of recidivism due to his personal background and age; 3) the circumstances
 8 of his involvement in the scheme; 4) his long history of lawful employment; 5) his extreme
 9 remorse and acceptance of responsibility; 6) his poor health condition; 7) his advanced age; and
 10 8) the need to avoid unwarranted sentencing disparities among defendants with similar
 11 backgrounds who have been convicted of similar offenses. *See* PSR, ¶79-81.

12 *1. Mr. Chang’s Behavior in This Case was Highly Unusual and Stands Little
 13 Chance of Reoccurring*

14 It is noteworthy that Mr. Chang is 78 years old and this offense is his first and only
 15 criminal conviction. The aberrant nature of this offense conduct and minimal chance of it
 16 reoccurring warrants consideration. Mr. Chang has no criminal history and has worked hard in
 17 lawful occupations for his entire life. His participation in the offense in this case was truly
 18 unusual for him and importantly, he did not seek out this illegal conduct. He was invited to
 19 participate in the foreclosure auction practice by a trusted friend and business partner, and then
 20 once there, he was instructed as to “how business is done.” He does not blame his business
 21 partner for introducing him to the foreclosure auctions, but this fact demonstrates that Mr. Chang
 22 was not someone who willingly sought out a criminal scheme, or who ever would have initiated
 23 such real estate dealings on his own. His law-abiding nature is clear given that it has been eight
 24 years since the offense conduct in this case, and he has gone without a single pretrial violation or
 25 misstep of any kind. As the letters of support from his family make clear, his risk of recidivism
 26

1 is extremely low. *See Letters of Support*, attached hereto as Exhibit B.

2 2. *Mr. Chang Has Demonstrated Sincere Remorse*

3 Mr. Chang has demonstrated strong remorse. He regrets his actions very much and places
 4 the blame appropriately on himself. *See Statement of Acceptance of Responsibility*, attached
 5 hereto as Exhibit A (“The group of men said if you don’t do it the way we do business here, you
 6 will not be able to get any property. We have more money and we will outbid you. It was said as
 7 a threat, *but I know that this is no excuse. I admit that I am guilty because I could have made a*
 8 *right choice to stop and just not buy property with these people.*”). Mr. Chang’s son Steve
 9 Chang explains: “When he told his family of the charges he faced and the infraction he had
 10 committed I was shocked with disbelief because these actions were not indicative of the man and
 11 father that I know. However, upon reflection [] I now understand that he thought he was
 12 operating within the rules as he understood them at the time. Of course, he now realizes his acts
 13 were outside the bounds of law and is ashamed for the part he played. And he is committed to
 14 make amends.” *See Letter of Steve Chang, Exh. B.* As his family knows very well, Mr. Chang’s
 15 participation was a small detour from an otherwise law-abiding life. He has decades of lawful
 16 business practices to prove it. Mr. Chang’s letter to the Court demonstrates that he is deeply
 17 remorseful and saddened by his actions. *See Exh. A.* He is committed to leaving this experience
 18 far behind him, and will never become embroiled in the criminal justice system again.

19 In addition, not only has he demonstrated his acceptance of responsibility by entering a
 20 timely plea, he has endeavored to assist the government so that it would have a greater picture of
 21 how this scheme was being run by the organizers of the foreclosure auctions. This willingness to
 22 admit his wrongdoing, including sitting down with government officials and assisting them in
 23 their investigation demonstrates an additional level of remorse. The government will be making
 24 a motion for a downward reduction based upon Mr. Chang’s truthful cooperation. The extent of
 25 that departure is entirely within the sound discretion of the Court and Mr. Chang submits that a
 26

1 modest variance to a probationary sentence is appropriate.

2 3. *Mr. Chang's Strong Family Ties and Responsibilities Support the Modest*
 3 *Variance Sought Here*

4 An additional mitigating factor in this case is Mr. Chang's strong family ties and
 5 responsibilities. His strong family ties augur in favor of his future success and support a sentence
 6 of probation. Strong family ties are an important, and entirely appropriate consideration for this
 7 Court. *See U.S. v. Menyweather*, 447 F.3d 625, 634 (9th Cir. 2006) (9th Cir. 2006) ("In the
 8 'broader appraisal,' available to district courts after *Booker*, courts can now... have the discretion
 9 to weigh a multitude of mitigating and aggravating factors that existed at the time of mandatory
 10 Guidelines sentencing, but were deemed 'not ordinarily relevant,' such as age, education and
 11 vocational skills, mental and emotional conditions, employment record, *and family ties and*
 12 *responsibilities.*") (emphasis supplied). Mr. Chang has a close loving family, all of whom are
 13 confident that he will never let them down again. *See* Exh. B (letters of support from family).

14 Importantly, in addition to supporting his wife, Mr. Chang will soon be acting as a care
 15 giver for her. Mr. Chang's wife is scheduled to have two medical procedures in May 2018 - knee
 16 surgery and a vascular embolization procedure. Given her age and physical condition, there will
 17 be significant recovery time after her knee surgery, including physical therapy appointments. Mr.
 18 Chang will be the sole caretaker for his wife during this period of rehabilitation and he needs to
 19 be there for her.

20 4. *Mr. Chang's Age and Medical Condition Warrant a Variance*

21 In addition to the aberrant nature of the offense conduct, his strong family ties and
 22 responsibilities, his lack of criminal history, and his acceptance of responsibility, a modest
 23 variance to probation is warranted due to Mr. Chang's age and health conditions. As detailed in
 24 the PSR, Mr. Chang is 78 years old, and has several medical conditions that require ongoing care.
 25 While these conditions are not currently life-threatening, the concern over inadequate medical
 26

1 treatment within the Bureau of Prisons is significant for Mr. Chang, and could very well result in
2 the worsening of these conditions. First of all, as noted in the PSR, Mr. Chang was diagnosed
3 with prostate cancer in 2004. Although currently in remission, Mr. Chang has regular medical
4 appointments to monitor his health. Additionally, Mr. Chang's heart condition has required him
5 on numerous times to call 911 and seek emergency medical care. The medications are largely
6 effective at controlling this condition, but when he has an episode of rapid, out of control
7 heartbeat, it is terrifying and he needs to be able to receive immediate, and perhaps most
8 importantly, competent medical care.

9 Age and medical condition are entirely appropriate bases on which to grant a variance
10 from the advisory guideline range. *See e.g., U.S. v. Hildebrand*, 152 F.3d 756 (8th Cir. 1998)
11 (affirmed downward departure for 70-year old from range of 51-63 months to probation with 6
12 months in home confinement where defendant was bookkeeper for a group convicted of mail
13 fraud and had life-threatening health conditions).

14 The current state of medical care in the Bureau of Prisons has been the subject of
15 significant scrutiny. The Office of the Inspector General in its 2016 report on medical care
16 within the Bureau of Prisons acknowledged how shortages in medical staffing impact safety and
17 security. *See* Office of the Inspector Gen'l, U.S. Dep't of Justice, *Review of the Federal Bureau*
18 *of Prisons' Medical Staffing Challenges* (Mar. 2016), found at:

19 <https://oig.justice.gov/reports/2016/e1602.pdf>. The OIG found that aging inmates on average
20 cost 8 percent more per inmate than inmates age 49 or younger. Importantly, and as pertinent to
21 Mr. Chang, aging inmates also have delayed access to medical care – with an average wait time
22 of 114 days to see an outside specialist. They also have delayed access to lower bunk beds and
23 limited accessibility to cells and bathrooms, especially in older institutions. Narrow sidewalks
24 and uneven terrain make it difficult for aging inmates to move around prisons. *See* U.S. Dep't of
25 Justice, Office of Insp. Gen'l, *The Impact of an Aging Inmate Population on the Federal Bureau*
26

1 *of Prisons* (Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf>. More recently, the current
 2 BOP Director has acknowledged: “[i]nmate health care remains a challenge for us. With
 3 increasing numbers of older inmates in our institutions, many of whom have complicated and
 4 chronic medical needs, we face rising costs of health care and pharmaceuticals. At the same
 5 time, recruitment and retention of qualified medical professionals to staff our prisons – many of
 6 which are somewhat remotely located – is hampered by incentives offered by the private sector.”
 7 Oversight of the Bureau of Prisons and Inmate Reentry, Hearing Before the Committee on
 8 Oversight and Gov’t Reform, House of Rep. (Dec 13, 2017) (statement of Mark Inch, Dir. , Fed.
 9 Bureau of Prisons), which can be found at:
 10 <https://oversight.house.gov/wp-content/uploads/2017/12/Inch-BOPStatement-12-13.pdf>.

12 In other words, despite the 2016 OIG report and efforts to address the medical
 13 shortcomings within the BOP, the director himself recognizes that adequate healthcare for an
 14 aging inmate population remains “a challenge.” The somewhat euphemistic phrasing
 15 notwithstanding, it is a nerve-wracking and potentially life-threatening situation for an individual
 16 with chronic health conditions nearing his 80th birthday who faces the prospect of a federal prison
 17 sentence.

18 Mr. Chang’s current medical conditions - glaucoma, high blood pressure, hearing loss,
 19 chronic leg pain, and atrial fibrillation - constitute a mitigating factor that supports the Probation
 20 Office’s recommendation of a probationary sentence. He is at extremely low risk of re-
 21 offending, and yet a sentence of imprisonment could very well be life-threatening. A
 22 probationary sentence will allow Mr. Chang to leave without permission to go to the hospital,
 23 seek prompt medical care for him (and/or his wife) without the added stressful step of seeking
 24 permission first from a probation officer. The Probation Office rightly finds this circumstance to
 25 justify a variance in this case.

5. *A Sentence of Probation Avoids Unwarranted Sentencing Disparities*

2 As the Probation Office correctly notes, a sentence of probation for Mr. Chang is an
3 important basis on which to consider a sentence below the advisory guideline range. As the
4 Court is well aware, the bid-ridding scheme at issue in this case in San Francisco and San Mateo
5 Counties is not the only case resulting from the investigation into this conduct in the greater bay
6 area. Numerous defendants have entered guilty pleas and several others proceeded to trial in the
7 east bay federal court matters, assigned to the Honorable Phyllis Hamilton. This Court thus has
8 the benefit of the sentencing ranges in those cases and can properly consider them here. As
9 pertinent to Mr. Chang, undersigned defense counsel is informed and believes that many of the
10 lower level participants with conduct similar to that of Mr. Chang received probationary
11 sentences. Thus, per 18 U.S.C. 3553(a)(6), the Probation Office correctly notes that a sentence
12 below the advisory guideline range may be warranted here in order to avoid an unwarranted
13 sentencing disparity. The Probation Office is perhaps in the best position to make this
14 determination as it has had the benefit of reviewing dozens of these cases.

CONCLUSION

16 Kuo Hsuan Chang has learned his lesson and he is terribly sorry for what he has done. He
17 recognizes his mistakes, and writes about them with refreshing honesty. He has spent the better
18 part of the past five years worrying, feeling sad, and feeling ashamed of himself. This rather
19 agonized mental state has in and of itself acted as its own form of punishment. He appreciates
20 the recommendation of the Probation Office and respectfully asks this court to sentence him to a
21 term of three years probation. Such a sentence takes into account his otherwise law-abiding life,
22 his relatively minor involvement in the overall bid-rigging scheme, his close family ties, his
23 extraordinary remorse and acceptance of wrongdoing, and perhaps most importantly and as
24 recognized by the Probation Office, his medical condition and advanced age.

25 This experience has been devastating for Mr. Chang, and he has lived with the

1 humiliation and shame that his own poor decisions have wrought for many years now. He sees
2 the errors in judgment and is certain that he will never find himself in this position again. A
3 probationary sentence is more than sufficient to deter any criminal conduct in the future and is
4 sufficient, but not greater than necessary to achieve the goals of 18 U.S.C. § 3553(a).

5

6 || Dated: April 19, 2018

Respectfully submitted,

7

TONY TAMBURELLO

8

/s/ *Tony Tamburello*
Attorney for Kuo Huan Chang

10

11

12

13

14

15

16

15

18

26

DEFENDANT KUO HSUAN CHANG'S
SENTENCING MEMORANDUM
US v. Chang, Case No. CR 13-670 CRB